

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ABINGDON DIVISION

ROBERT ADAIR, on behalf of himself and all
others similarly situated,

Plaintiff,

v.

Case No. 1:10-cv-00037

EQT PRODUCTION COMPANY, ARLIE J.
LAMBERT & ANN P. LAMBERT,
RAYMOND LOFTIN & LINDA LAMBERT
LOFTIN, G. WORTH PEGRAM, JR. &
BERNICE LAMBERT PEGRAM, ARTHUR
AMOS & ABBIE LAMBERT AMOS, JERRY
SHORT & ROSE LAMBERT SHORT,
HARRIS McGIRT & JOAN LAMBERT
McGIRT, GREG LAMBERT, C. W. DOTSON
& MARY FRANCES L. DOTSON, OCIE G.
SUTHERLAND, DENNIS SUTHERLAND &
CHARLOTTE SUTHERLAND, DON RAINEY
& LINDA CAROL RAINEY, LAMBERT
LAND LLC, and JOHN DOES A-Z,

Defendants.

PLAINTIFF'S RESPONSE TO LAMBERT DEFENDANTS'
OBJECTIONS TO THE U.S. MAGISTRATE'S
REPORT AND RECOMMENDATIONS

The Lambert Defendants are coal estate/interest owners whose claims to coalbed methane ("CBM") ownership purportedly conflict with Plaintiff's CBM ownership claim. (*See* Amended Class Action Complaint (Dkt. No. 32) ¶ 25.) In addition to joining EQT Production Company's ("EQT's") arguments in favor of EQT's motion to dismiss, the Lambert Defendants argued that the Court should exercise its discretion to decline to hear the pendent state law claims that Plaintiffs have asserted against it and EQT if the Court dismissed Plaintiff's constitutional claim, which the Lambert Defendants contended would remove subject matter jurisdiction arising under a federal question. In her Report and Recommendations ("Report"), Magistrate Judge Sargent rejected these arguments, holding that the Court still had jurisdiction over the claims asserted

against EQT and the coal owner defendants. (*See* Dkt. No. 177, at 54-55.) The Lambert Defendants have objected to this aspect of the Report. (*See* Dkt. No. 181.) However, their objections continue to misstate the multiple bases for the Court’s jurisdiction over these claims, and should be overruled.

The Lambert Defendants first join EQT’s objection to Magistrate Judge Sargent’s recommendation that Plaintiff’s complaint not be dismissed for failure to join the individuals and entities whose interest in CBM ostensibly conflicts with those of the Class members.

Recognizing that “courts should take a pragmatic approach to deciding motions to dismiss for failure to join a party” (Report at 54), Magistrate Judge Sargent recommended that the court deny Defendants’ motions for failure to name each of the individual coal owners. Plaintiff incorporates by reference his response to EQT’s arguments in his opposition to EQT’s original motion to dismiss (Dkt. No. 92) and to EQT’s objections to the Report. (*See* Dkt. No. 188.)¹

The Lambert Defendants then object to the Report’s recommendation that the Court not decline to exercise its jurisdiction over Plaintiff’s pendent state law claim. Plaintiff pointed out in opposing the Lambert Defendants’ motion to dismiss that the Court has “wide latitude” to retain jurisdiction, pursuant to 28 U.S.C. § 1367(c), over pendent state law claims. (*See* Dkt. No. 92, at 4-5, citing *Shanaghan v. Cahill*, 58 F.3d 106, 110 (4th Cir. 1995) (reversing trial court decision to decline to retain jurisdiction over pendent state law claims).) “Among the factors that inform this discretionary determination are convenience and fairness to the parties, the existence of any underlying issues of federal policy, comity, and considerations of judicial economy.” *Shanaghan*, 58 F.3d at 110 (citing *Cohill*, 484 U.S. at 350 n.7, 108 S.Ct. at 619 n.7)). The factors supporting the exercise of supplemental jurisdiction all weigh in its favor here, as

¹ It is not clear what the Lambert Defendants’ statements (Objections at 2-3) about the purported difficulty of locating other coal owners or about Plaintiff’s “responsibility” to name other parties have to do with Magistrate Judge Sargent’s Report, or what purpose they serve, given their acknowledgement that they possess no information about EQT’s records. (*Id.* at 2.)

Plaintiff explained in opposing the Lambert Defendants' motion to dismiss. (*See* Dkt. No. 92, at 5-8.)

However, as Magistrate Judge Sargent correctly stated, a supplemental jurisdiction analysis is not necessary, because the Court has independent subject matter jurisdiction over this matter pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2)(A) (providing for federal jurisdiction over class actions in which the amount in controversy exceeds \$5 million and there is minimal diversity).² CAFA jurisdiction attaches with the filing of the complaint, unquestionably continues up to a decision on class certification, and according to most courts who have considered the issue, continues even after a denial of class certification. *See, e.g., Cunningham Charter Corp. v. Learjet, Inc.*, 592 F.3d 805, 806-07 (7th Cir. 2010) (holding that CAFA jurisdiction continues after denial of class certification); *Delsing v. Starbucks Coffee Corp.*, No. 08-cv-1154, 2010 WL 1507642, at *2 (D. Minn. Apr. 14, 2010) (same); *In re Burlington Northern Santa Fe Rwy. Co.*, 606 F.3d 379, 381 (7th Cir. 2010) (holding that CAFA jurisdiction does not evaporate even where plaintiff elects not to pursue class certification). It continues to provide jurisdiction here independent of pendent jurisdiction.

For these reasons, the Lambert Defendants' objections to Magistrate Judge Sargent's Report and Recommendations should be overruled.

² The Lambert Defendants have apparently abandoned their argument that any exception to CAFA jurisdiction applies here.

Dated: February 18, 2011

Respectfully submitted,

PLAINTIFF ROBERT ADAIR

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CERTIFICATE OF SERVICE

The undersigned counsel does hereby certify that he has this day served a true and correct copy of the above and foregoing upon all counsel of record via ECF notification and/or by e-mail

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This the 18th day of February, 2011.

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